

#### REMARKS

Upon receipt of the Office Action, Claims 1-3, 5-7, 38-47, 72-75 and 84-114 were pending, Claims 5-7, 39, 41, 43, 45, 47, 73, 75, 85-89, 93-104, 106, 107 and 109-113 were withdrawn from consideration as being directed to non-elected subject matter, Claims 38, 40, 42, 44, 46, 72, 74, 84 and 105 stood rejected, and Claims 1-3, 38, 40, 42, 44, 46, 72, 74, 84, 90-92, 105, 108 and 114 were objected to. By way of this amendment, Claims 1-3, 38, 90, 108 and 114 are amended and Claims 40, 42, 44, 46, 72, 74, 84 and 105 are cancelled. Reconsideration of the claimed subject matter is respectfully requested in view of the above amendments and the following remarks.

#### Election/Restrictions

The Examiner acknowledged Applicants' election with traverse of Group II in the reply filed on October 21, 2004. The Examiner did not consider Applicants' arguments for traversing the lack of unity/restriction requirement persuasive and therefore made the requirement final. In making the restriction requirement final, the Examiner withdrew Claims 5-7, 39, 41, 43, 45, 47, 73, 75, 85-89, 93-104, 106, 107 and 109-113 as being directed to non-elected subject matter.

For reasons of record, Applicants continue to traverse this restriction requirement and reserve the right to petition the Commissioner under 37 CFR 1.144 to review this requirement.

In addition, Applicants reserve the right to file separate divisional applications on the non-elected subject matter. Furthermore, if any claim in Group II is found allowable, Applicants reserve the right to amend the claims in any of the non-elected Groups during prosecution to be of the same scope of any claim found to be allowable in Group II and to request rejoinder of such claims in accordance with MPEP §821.04 and *In re Ochiai*, 37 USPQ 1127.

Objection to Claims 1-3, 38, 40, 42, 44, 46, 72, 74, 84, 90-92, 105, 108 and 114

The Examiner objected to Claims 1-3, 38, 40, 42, 44, 46, 72, 74, 84, 90-92, 105, 108 and 114 as containing non-elected subject matter. The Examiner indicated that these Claims would be allowable over the prior art if they were amended to be directed solely to the elected invention of Group II and to overcome the following rejection under 35 U.S.C. 112, ¶1.

Claims 1-3, 38, 90-92, 108 and 114 are amended to be directed to the subject matter of Group II as set forth in the Restriction Requirement of July 22, 2004. Accordingly, Applicants respectfully request that the Examiner withdraw her objection of these claims as containing non-elected subject matter and allow these claims to issue forthwith.

Claims 40, 42, 44, 46, 72, 74, 84 and 105 are cancelled herein as discussed below, thereby rendering moot the Examiner's objection of these claims.

Rejection of Claims 38, 40, 42, 44, 46, 72, 84 and 105 35 USC § 112 ¶1

The Examiner rejected Claims 38, 40, 42, 44, 46, 72, 74, 84 and 105 under 35 U.S.C. 112, ¶1, as failing to comply with the enablement requirement. In particular, the Examiner contends that the Specification only provides direction and guidance for the use of the compounds in the treatment of arrhythmia. The Examiner further contends that the Specification is silent and fails to provide guidance as to what diseases are mediated by blocking ion channels, except for the treatment of arrhythmia and that a person skilled in the art would have to engage in undue experimentation to test which disorders can be treated by the compound encompassed in the instant claims, with no assurance of success.

Claim 38 is amended to be directed to pharmaceutically compositions comprising a pharmaceutically acceptable carrier, diluent or excipient and a therapeutically effective amount of a compound according to Claim 1 or Claim 2. This amendment does not introduce new matter in that it is fully supported by the Specification as originally filed (see, for example, pages 15 and 23-24 of the Specification). Furthermore, amending Claim 38 in this manner is no indication that Applicants acquiesce to the Examiner's reasons for rejecting Claim 38 under 35 U.S.C. 112, ¶1. Applicants respectfully submit that Claim 38, as amended, is fully enabled by the Specification as originally filed under 35 U.S.C. 112, ¶1. Accordingly, Applicants respectfully

request that the Examiner withdraw the rejection of Claim 38 under the 35 U.S.C. 112, ¶1, and allow this Claim to issue forthwith.

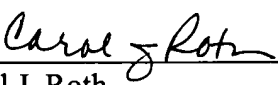
Furthermore, in the interest of expediting the allowance of this application without acquiescing to the Examiner's reasons for rejecting Claims 40, 42, 44, 46, 72, 74, 84 and 105 under 35 U.S.C. 112, ¶1, Applicants have cancelled Claims 40, 42, 44, 46, 72, 74, 84 and 105. Applicants reserve the right to pursue the subject matter of these claims in a separate continuation application.

Conclusion

Applicants believe that the present application is in condition for allowance. In the event that there are any questions, comments or suggestions concerning this amendment or the application in general, the Examiner is requested to telephone the undersigned representative so that prosecution may be expedited.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,  
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